

STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

CHIEF CLERK'S OFFICE
No. 02-0345

)
)
)
)
)
)
)
)

Given the imminent effective date of the Act (July 1, 2002) and the sanctions for failure to comply with the Act (Section II), WSD's request is the type of determination ripe for declaratory relief.

"Municipally Owned Utility"

The key issue is whether the Legislature, when it used the term "municipally owned" meant "municipality" or "municipal corporation."

A "municipality" means cities, villages, and incorporated towns. A "municipal corporation" means a public corporation or machinery of government. Municipalities are simply one of a number of types of municipal corporations (units of local government). This distinction is drawn in the Illinois Constitution, i.e.:

Section 1. Municipalities and units of local government.

"Municipalities" means cities, villages and incorporated towns. *"Units of local government" means* counties, **municipalities**, townships, special districts, and units, designated as units of local government by law, which exercise limited governmental powers or powers in respect to limited governmental subjects, but does not include school districts. (Article 7, Section 1 of the Illinois Constitution).

A "municipal corporation" is a generic term meaning a public corporation with a broader meaning than "municipality," i.e.:

MUNICIPAL CORPORATION. A public corporation, created by government for political purposes, and having subordinate and local powers of legislation. (Black's Law Dictionary). (Emphasis added).

The cases cited by JULIE also support the proposition that sanitary districts are municipal corporations in the generic sense, not municipalities in the limited sense defined in the Illinois Constitution.

If, in referendum election required by said section, a majority of the votes are in favor of the organization of the district, it is lawfully organized as a sanitary district under the name designated in the petition and is invested with the corporate powers conferred by the act. It is thereby established as a municipal corporation under such corporate name and thereupon becomes a part of the machinery of the government for the purposes designated in the act. (*Saline Branch Dist. V. Urbana-Champaign Sanitary Dist.*, 395 Ill.2d, 69 N.E. 2d 251 @ 255 (1946). (Emphasis added).

*** *** ***

A sanitary district of this character is a municipal corporation, created by legislative authority. It is a part of the machinery of government. Its functions are public. (*Chicago & E.I. RY. Co., et al. v. Sanitary Dist. Of Bloom Township*, 350 Ill.542, 183 N.E. 585 @ 587 (1932). (Emphasis added).

*** *** ***

In essence, there are multiple subsets of municipal corporations. One subset is municipalities. Another subset is special districts (e.g. sanitary districts). Other subsets include counties and townships. "Municipal corporations," however, does not equate with "municipality," i.e., cities, villages, and incorporated towns.

When the Legislature used the term "municipally owned" did it mean cities, villages, and incorporated towns? Did it mean public corporations?

WSD respectfully submits that the Legislature intended that the term "municipally owned" referred to "municipality" in the more specific terms outlined in the Constitution, i.e., cities, villages, and incorporated towns. If the Legislature intended that sanitary districts should be included, the Act would have stated that the Act applies to all municipal corporations, i.e., "municipal corporation owned utility." The use of the term "municipally" in one section of the Act and "units of local government" in another section of the Act reflects the Legislature's understanding of the distinction between "municipality" and "municipal corporation" and the Legislature's intent that "municipally" means cities, villages, and towns.¹

Discovery

JULIE requests additional time to conduct discovery. WSD respectfully submits that the issue raised by WSD is solely a question of law, i.e., statutory construction to determine legislative intent. Accordingly, WSD respectfully submits that a ruling on WSD's request can be made without any discovery.

¹ As WSD noted in its Request, the reference in Section 14 of the Act to units of local government does not supercede, expand, or alter other provisions of the Act. The language in Section 14 simply means that all units of local government must comply with the Act, i.e., in accordance with other provisions of the Act. Under the Act, WSD is not covered for the reasons stated.

Conclusion

WSD, for the reasons stated in its Request for Declaratory Ruling and for the reasons stated herein, seeks a declaratory ruling from the Illinois Commerce Commission that the Illinois Underground Facilities Damage Prevention Act does not require sanitary districts to participate in JULIE.

Respectfully Submitted,

WHEATON SANITARY DISTRICT

BY: PEREGRINE, STIME, NEWMAN,
RITZMAN & BRUCKNER, LTD.

By: Roger A. Ritzman
Roger A. Ritzman

STATE OF ILLINOIS)
) SS
COUNTY OF DU PAGE)

CERTIFICATION

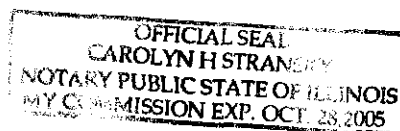
Roger A. Ritzman, being first duly sworn on oath, deposes and states that he is the Attorney for Wheaton Sanitary District in the above-captioned matter, that he read the foregoing document, and that the statements made herein are true and correct to the best of his knowledge and belief.

Roger A. Ritzman
Roger A. Ritzman

SUBSCRIBED AND SWORN to before me this
17th day of June, 2002.

Carolyn H. Stranery
Notary Public

Roger A. Ritzman
PEREGRINE, STIME, NEWMAN,
RITZMAN & BRUCKNER, LTD., #65250
221 E. Illinois Street, P.O. Box 564
Wheaton, Illinois 60189-0564
Phone (630) 665-1900
Facsimile (630) 665-0407
M:\WHEATON SANITARY DISTRICT\ReplyToJULIE's Response.wpd



STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION

WHEATON SANITARY DISTRICT

No. 02-0345

Request for Declaratory Ruling Concerning
the Underground Facilities Damage
Prevention Act (220 ILCS 50)

NOTICE OF FILING

TO: Judge John D. Albers
Administrative Law Judge
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

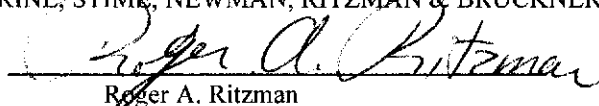
Linda M. Buell
Steven L. Matrisch
Illinois Commerce Commission
527 E. Capitol Avenue
Springfield, IL 62701

John R. Ardaugh
Jeffrey S. Taylor
SPECIA, AYERS & ARDAUGH
Two Rialto Square, Suite 200
116 N. Chicago Street
Joliet, IL 60432

YOU ARE HEREBY NOTIFIED that on the 17th day of June, 2002, we caused to have filed with the Clerk of the Illinois Commerce Commission, a REPLY TO J.U.L.I.E.'S RESPONSE TO REQUEST FOR DECLARATORY RULING, a copy of which is hereby served upon you.

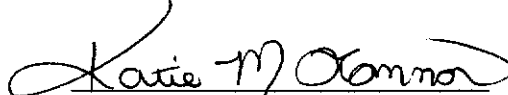
PEREGRINE, STIME, NEWMAN, RITZMAN & BRUCKNER, LTD.

By:


Roger A. Ritzman

PROOF OF SERVICE

On June 17, 2002, I, the undersigned on oath state that I served this notice, along with a copy of the pleading, by mailing a copy to each person to whom it is directed and depositing the same in the U.S. Mail at Wheaton, Illinois, with proper postage prepaid.



SUBSCRIBED AND SWORN to before me this
17th day of June, 2002.


Notary Public

PEREGRINE, STIME, NEWMAN,
RITZMAN & BRUCKNER, LTD.
Attorney for Plaintiff
221 E. Illinois Street, P.O. Box 564
Wheaton, Illinois 60189-0564
630/665-1900

